UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
NOV 24 1992
Clerk, U.S. District Court
Central District of California
By _____ Deputy

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

SANTA ANA CITY EMPLOYEES ASSOC., et al.,
Plaintiffs,
vs.
CITY OF SANTA ANA, et al.,
Defendants.

No. CV 91-0212-RMT (Ex)

ORDER GRANTING MOTION BY PLAINTIFFS FOR SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING IN PART MOTION BY DEFENDANTS FOR PARTIAL SUMMARY JUDGMENT

This matter having come before the court on the cross-motions by plaintiffs Santa Ana City Employees Association and Barbara Lambert and defendants City of Santa Ana, et al. for summary judgment, and the court having considered the pleadings and other documents filed herein and having filed findings of fact and conclusions of law concurrently herewith,

IT IS ORDERED that:

1. The motion by plaintiff Santa Ana City Employees Association for summary judgment on the first cause of action for violation of 42 U.S.C. § 1983 is granted as to liability against all defendants and as to declaratory and injunctive relief against defendant City of Santa Ana. Accordingly, defendant City of Santa Ana has no right to discipline, and is therefore enjoined from disciplining, City employees for speeches that they make to the City Council which are a matter of public concern.

2. The motion by defendants City of Santa Ana, et al. for partial summary judgment is granted in part and denied in part as follows:

a. as to the first cause of action for violation of 42 U.S.C. § 1983, summary judgment having been granted in favor of plaintiff, the motion by defendants for partial summary judgment as to said cause of action is denied.

b. as to the second cause of action for violation of the Meyers-Milias-Brown Act, the motion by defendants for partial summary judgment is granted.

Dated: 11/23/92

/s/ ROBERT M. TAKASUGI
ROBERT M. TAKASUGI
United States District Judge

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the court on the cross-motions by plaintiffs Santa Ana City Employees Association and Barbara Lambert and defendants City of Santa Ana, et al. for summary judgment, and the court having considered the pleadings and other documents filed herein, the court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff Santa Ana City Employees Association ("SACEA") is the exclusive bargaining representative for all non-supervisory, non-professional employees of the defendant City of Santa Ana (the "City"), including all non-supervisory library employees.

2. Plaintiff Barbara Lambert ("Lambert") has been an employee of the City since 1966 and is the director of SACEA. At all times relevant hereto, Lambert was employed in the library department.

3. At all times relevant hereto, defendant Robert Richard ("Richard") has been employed by the City as the Library Director.

4. At all times relevant hereto, defendant David Ream ("Ream") has been employed by the City as City Manager.

5. Prior to October 15, 1990, the tension between the staff of the City library and defendant Richard became the subject of public discussion. SACEA and its members employed by the library had protested to City management regarding Richard's conduct. The protests included assertions that Richard mismanaged the library department and treated employees in an abusive and intimidating manner, and that Richard's conduct was having an adverse effect on service to the public.

6. On October 1, 1990, at a public meeting of the Santa Ana City Council, SACEA President Eddie Bentley ("Bentley") spoke to the Council, citing a lack of communication between library staff and the Library Director and a lack of confidence in the Library Director. Bentley requested that the Council direct the City Manager to investigate circumstances causing library staff members to work in fear of their jobs. Mayor

Young requested the City Manager to investigate and provide a status report to the Council within two weeks.

7. On October 15, 1990, pursuant to a request from Bentley, Lambert addressed the Council at a public meeting during the public comments period. The proceedings were televised via cable to approximately 20,000 dwelling units in the City.

8. In her remarks, Lambert communicated to the Council her belief and the belief of many of her fellow workers that Library Director Richard was mismanaging the City's libraries and that his conduct was causing great damage to the public, the library and the library's employees.

9. On or about November 2, 1990, defendant Richard issued to Lambert a letter of reprimand "for insubordinate action taken by you at an evening session of the City Council and for not utilizing established procedures for a grievance." The reprimand accuses Lambert of making insubordinate statements when she criticized Richard in her remarks to the City Council and stated that the letter will be placed in Lambert's personnel file.

10. SACEA, though counsel, protested the letter of reprimand by a letter to City Manager Ream dated November 12, 1990. SACEA demanded that the letter of reprimand be withdrawn and that Richard be disciplined for violating Lambert's constitutional and statutory rights to speak, petition and engage in union activity.

11. The letter of reprimand has not been rescinded.

12. Defendant Richard knew that Lambert was an officer of SACEA.

13. Plaintiffs filed a complaint against defendants for infringement of their rights under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983 and for violation of the Meyer-Milias-Brown Act, California Government Code § 3500, *et seq.* (the "Act").

14. Defendants have not asserted the existence of a governmental interest in the punishment of speech.

15. Plaintiff Lambert has not provided any evidence that she filed a petition for writ of mandamus to enforce a memorandum of understanding or that she filed a government tort claim for money damages.

16. Plaintiffs do not address the merits of their second cause of action for violation of the Act in opposition to defendants' motion for summary judgment.

Any finding of fact which may be deemed a conclusion of law is hereby incorporated into the Conclusions of Law below, and any conclusion of law which may be deemed a finding of fact is hereby incorporated into the Findings of Fact above.

CONCLUSIONS OF LAW

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

2. Defendant Richard acted under color of state law in his capacity as Library Director. Defendant Ream acted under color of state law in his capacity a City Manager.

3. In evaluating whether or not the City violated Lambert's First Amendment rights, the "threshold inquiry is whether the statements at issue address a matter of public concern . . . [S]uch speech occupies the 'highest rung of the hierarchy of First Amendment value' . . . It is 'more than self-expression; it is the essence of self-government,' worthy of special protection." *Allen v. Scribner*, 812 F.2d 426, 430 (9th Cir. 1987). (citations omitted).

4. Whether an employee's speech involves a matter of public concern is a question of law, *Connick v. Myers*, 461 U.S. 138, 148 n. 7, 103 S.Ct. 1684, 1690-91 n. 7

(1983), and must be determined through consideration of the content, form and context of the statement. *Id.*, 471 U.S. at 147-48.

5. Lambert's speech was a matter of public concern.

6. The court must balance the right of Lambert to comment on matters of public concern against the interest of the City as an employer in promoting the efficiency of the public services it performs through its employees. *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731 (1968).

7. To find that the City's interest as an employer in efficient functioning outweighs Lambert's First Amendment rights, defendants must demonstrate actual, material and substantial disruption caused by the speech. *Roth v. Veterans' Administration of Govt. of United States*, 856 F.2d 1401, 1407 (9th Cir. 1988).

8. Defendants have not established the existence of an overriding governmental interest that justifies the punishment of speech or that Lambert's speech resulted in actual disruption.

9. By issuing a letter of reprimand to Lambert and by refusing to rescind it, Richard violated Lambert's First Amendment rights to free expression. *Allen v. Scribner, supra; McKinley v. City of Eloy*, 705 F.2d 1110 (9th Cir. 1983).

10. The proper remedy for a violation of the Meyer-Milias-Brown Act, California Government Code § 3500 *et seq.*, is an equitable action for writ of mandamus. *San Leandro Police Officers Ass'n v. City of San Leandro*, 55 Cal. App. 3d 553, 127 Cal. Rptr. 856 (1976).

11. The action for writ of mandamus is to enforce the provisions of a memorandum of understanding or to compel the public entity to refrain from interfering with employees' rights to participate in union activities.

Glendale City Employees' Ass'n v. City of Glendale, 15 Cal. 3d 328, 343-44, 124 Cal. Rptr. 513 (1975).

12. A claim for money damages under the Act requires that plaintiff file a government tort claim pursuant to California Government Code § 910, *et seq.* *San Leandro Police Officers Ass'n, supra* 55 Cal. App. 3d at 559.

13. Plaintiffs have not come forward with any evidence to establish that a government tort claim was filed or that a memorandum of understanding exists.

14. Summary judgment should be granted in favor of plaintiffs against all defendants for liability on the first cause of action for violation of 42 U.S.C. § 1983 and in favor of plaintiffs against defendant City for declaratory and injunctive relief on the first cause of action for violation of § 1983.

15. Summary judgment should be granted in favor of defendants on the second cause of action for violation of the Meyer-Milias-Brown Act, California Government Code § 3500, *et seq.*

16. There are genuine issues of material fact on defendants' assertion of official immunity.

Dated: 11/23/92

/s/ ROBERT M. TAKASUGI
ROBERT M. TAKASUGI
United States District Judge